IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 5456 of 2006 (O&M)
Date of decision : 14.12.2006

The New India Assurance Company Limited

....Appellant

Versus

Smt. Raj Rani & others

...Respondents

CORAM : HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.N.K.Khosla, Advocate
for the appellant.

...

ADARSH KUMAR GOEL,J.(O)

This appeal has been filed by the insurance company against the award of the Tribunal awarding a sum of Rs.3 lakh to the claimants on account of death of Nand Kishore by rash and negligent driving.

Case of the claimants is that during night intervening 17/18.8.2001, the deceased was going from Rajpura towards Banur on his motorcycle and at about 11.00 p.m. when he reached the area of Ram Nagar on Rajpura-Chandigarh Road, he was hit by Tata Sumo, driven rashly and negligently by Ram Kesar driver. The deceased received multiple simple and grievous injuries and died on the spot. He was aged 38 years and was working as partner in commission agent shop apart from working as accountant in the said shop. He was

earning Rs.5,000/- per month.

The claim was contested by the insurance company as well as by the driver and the owner.

Following issues were framed :

1. Whether death of Nand Kishore has taken in a motor accident with Tata Sumo No.HR-01L-3835 due to rash and negligent driving of Tata Sumo by respondent No.1? OPA
2. Whether the claimants are entitled to any compensation. If so to what extent? OPA
3. Whether driver of Tata Sumo No.HR-01L-3835 was not holding a valid driving licence at the time of accident? OPR
4. Whether the petition is not maintainable? OPR
5. Whether the petition is bad for mis-joinder for necessary parties? OPR
6. Relief.

Additional issue No.5-A was framed later to the following effect:

5-A. Whether claim petition is a result of collusion?OPR

The Tribunal held that the deceased was proved to have died on account of rash and negligent driving by the driver of the vehicle and the claimants were entitled to compensation. Reference was made to chargesheet Ex.P.7 filed against the driver before the Court, FIR Ex.P.9, order of the Magistrate Ex.P.11 releasing the vehicle on superdari, apart from other evidence.

PW3 Jawahar Lal, eye witness proved the accident. It was held that acquittal of the driver by the criminal court did not affect the claim that the driver was negligent while driving the vehicle. Income of the deceased was assessed as Rs.3,000/- per month and dependency was worked out as Rs.2,000/-. Multiplier of 12 was applied and after taking into account compensation for consortium to the widow and cremation expenses, a sum of Rs.3 lakh was awarded.

Only contention raised by the learned counsel for the insurance company is that the driver did not have a valid driving licence. The Tribunal has found that the driver had driving licence Ex.R.7 which had expired on the date of the accident. But the said invalidity did not absolve the insurance company of complying with the award, though the insurance company could proceed against the driver and owner for recovering the amount.

Learned counsel for the appellant submits that in view of finding that driving licence was not in force on the relevant date, the insurance company was not liable. This aspect is covered against the appellant by judgments of the Hon'ble Supreme Court in **National Insurance Co.Ltd. v. Swaran Singh and others** AIR 2004 SC 1531 and **New India Asurance Co.Shimla v. Kamla** AIR 2001 SC 1419. The course adopted by the Tribunal permitting the insurance company to proceed against the owner and driver cannot be held to be erroneous.

Therefore, we find no merit in this appeal.

Dismissed.

(MAHESH GROVER)
JUDGE

(ADARSH KUMAR GOEL)
JUDGE

December 14, 2006

dss